Order

Michigan Supreme Court
Lansing, Michigan

November 29, 2022

Elizabeth T. Clement,
Chief Justice

162330

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

RIVERBROOK,
Plaintiff-Appellee,

v

SC: 162330
COA: 349065
Macomb CC: 2018-000274-AV

ABIMBOLA FABODE and All Other Occupants,
Defendants-Appellants.

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On October 12, 2022, the Court heard oral argument on the application for leave to appeal the September 17, 2020 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(H)(1). We VACATE in part the judgment of the Court of Appeals to the extent that it can be read to stand for the proposition that expert-witness testimony must be provided in all cases in which a person is seeking a reasonable accommodation under 42 USC 3604(f)(3)(B) of the Fair Housing Act (FHA), or MCL 37.1506a(1)(b) of the Persons with Disabilities Civil Rights Act. The statutes contain no such requirement. We AFFIRM the Court of Appeals' decision to remand this case for further proceedings. The panel correctly concluded that further proceedings are necessary before this matter can be resolved. The district court erred by treating Anne Venet's letter as automatically satisfying the requirements of the FHA and denying the writ of eviction without allowing the record to be developed. On remand, the court should reconsider whether the defendants satisfied their burden of establishing their FHA defense. 42 USC 3604(f)(3)(B); see also *Overlook Mut Homes, Inc v Spencer*, 415 Fed Appx 617, 621 (CA 6, 2011).

WELCH, J. (*concurring in part and dissenting in part*).

I agree with the majority that expert witness testimony is not needed whenever a reasonable-accommodation request is at issue in a court proceeding. I also agree with the decision to affirm the Court of Appeals' remand of this case for further proceedings. However, I would also vacate the Court of Appeals' holding that Anne Venet's testimony and the letter that she authored must be evaluated under MRE 702. Venet appeared before the district court because the court (properly in my opinion) issued a subpoena sua sponte,

not because a party called her as a witness. The record concerning Venet is relatively undeveloped because the district court erred by precluding plaintiff from questioning Venet about the factual basis for the opinion she provided in favor of defendants. Given that this line of questioning was prohibited by the district court, I believe it was premature for the Court of Appeals to conclude that the evidence associated with Venet must be evaluated under MRE 702, as opposed to MRE 701 and the rules governing hearsay. There is at least a possibility that Venet could testify as a fact witness regarding the need for an accommodation on the basis of what was discussed on the phone if a phone conversation with a limited license professional counselor can qualify as a statement made for purposes of medical treatment or medical diagnosis. See MRE 803(4). The Court has scant information about the factual basis for the opinion provided in the letter Venet authored because plaintiff was not permitted to ask Venet about her conversation with the party seeking a reasonable accommodation. Questions regarding how to characterize Venet's testimony and the letter she authored, as well as what rules of evidence are applicable, are best resolved by the district court on remand. I respectfully dissent from the majority's decision to leave undisturbed the Court of Appeals' holding that the evidence related to Venet must be evaluated under MRE 702.

CAVANAGH, J., joins the statement of WELCH, J.